



Mattel, Inc.

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Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
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RE: COPPA Rule Review 2005, Project No. P054505

Mattel, Inc. is the worldwide leader in the design, manufacture and marketing of toys and family products. For more than 50 years, Mattel, Inc.'s premier toy brands have delivered innovative toys that inspire and spark children's imaginations around the world. The company's best-known brands include Barbie®, Hot Wheels®, Fisher-Price®, Tyco® R/C, and American Girl.® With headquarters in El Segundo, California, Mattel has approximately 5,500 employees in the U.S., offices and facilities in 42 countries and sells its product in more than 150 nations throughout the world.

Mattel appreciates the opportunity to submit these comments to the Federal Trade Commission (FTC) on issues raised in its notice of 70 Fed. Reg. 21107-21110 (April 22, 2005) regarding the Children's Online Privacy Protection Act (COPPA) Rule.

As a major global toy company, serving children and their parents is at the core of our businesses. Mattel has a strong commitment to protecting the privacy and security of consumer data entrusted to us, and are particularly mindful of protecting the privacy of children. We have supported the goals of COPPA. Indeed, as a supporter and Advisory Board member of the Children's Advertising Review Unit (CARU), we are pleased that our industry self-regulatory body has taken a leading, visible role well prior to adoption of COPPA in establishing guidelines on children's privacy, educating industry about children's privacy, initiating complaints to assure compliance, and seeking to advance common-sense standards that offer real protection to children. To this end, we previously filed comments¹ on this matter in support of maintaining the sliding scale mechanism and wholeheartedly support similar comments filed earlier this year by Children's Advertising Review Unit (CARU)² of the National Advertising Division (NAD)

¹ See letter of February 11, 2005 from Corinne Murat to FTC
<http://www.ftc.gov/os/comments/COPPA%20Rule%20Ammend/00053.pdf>

² CARU, which focuses on children's advertising, and the National Advertising Division (NAD), which focuses on general advertising, is overseen by a strategic alliance of the American Association of Advertising Agencies

to make permanent the sliding scale mechanism (e-mail plus) for obtaining verifiable consent.³ Additionally, based on our experience with sites primarily intended for adults, we offer comments on adult consumer reactions to age screening, and recommend consideration of some changes to age-screening approaches to protect children while minimizing complaints from adult consumers about that process. Further, Mattel strongly favors continued recognition of credit cards as a method of verifiable consent. We also comment briefly on the value of the four Safe Harbor programs. Finally, we address a concern about a separate proposal on which the FTC seeks comment, CAN SPAM, and its interface with COPPA requirements in connection with refer-a-friend offerings.

Value of the Rule

The three most important elements of the rule in protecting the privacy and safety of children online involve the following: 1) the prohibition on website operators collecting more data than is reasonably necessary to allow a child to participate in an offering online, 2) the requirement that the most robust methods of verifiable parental consent should be used in instances where children's personal information might be shared with third parties, and 3) obligations to provide reasonable security of children's personal data. Mattel, as a leader in the industry, had applied these principals to its online data collection practices in accordance with CARU recommendations prior to the enactment of COPPA. Mattel strongly endorses these principles as the lynchpin of protecting children's privacy online.

Age Screening

In operating our child-directed sites, Mattel simply assumes that we are interfacing with children. We therefore minimize the collection of personal information from children, relying on COPPA's "one-time" exception to answer questions from children, offer features like e-cards, and the like. We have also incorporated neutral age screening in many of our sites primarily directed to adults as a method of avoiding collecting personal information from children who may be visiting these sites, especially in sites where the shopping areas provide a "wish list" feature to allow children to create a wish list without entering personal information. When we conduct age-screening, our sites employ session cookie technology so that any individual who enters an age under 13 cannot just hit the back-button to change his/her age on the screening page. Consistent with current CARU and FTC recommendations, we apply a "one-strike" rule. As a result, any visitor who enters a birth date under age 13 (including an adult visitor who erroneously enters their age) is blocked from re-entering their age. The visitor who enters an age under 13 must completely close out their browser and then return to our site, or clear their cookie file, before being allowed to proceed. *Frustration with our age-screening process is the single largest area of consumer complaints that our e-commerce websites receive from adult online consumers.*

(AAAA), the American Advertising Federation (AAF), the Association of National Advertisers (ANA) and CBBB, known as the National Advertising Review Council (NARC).

³ See letter of February 11, 2005 from Elisabeth Lascoutx to FTC
<http://www.ftc.gov/os/comments/COPPA%20Rule%20Ammend/00054.pdf>

We are unable to quantify how many potential shoppers simply abandon their shopping effort, frustrated when they accidentally type in an incorrect birth date and are blocked from continuing with their online purchase. Those that, despite their frustration, seek to continue to try to make a purchase by contacting our toll-free number generally offer two complaints. First, they express frustration at what appears to be a technological problem with the site. They view our age-screening cookie to be cumbersome and consumer unfriendly because it does not offer them the ability to correct erroneous information, and this perception leads to the implied perception that our sites are not technologically sophisticated. Second, a substantial (but lower) number of consumers are irate at the request for birth date information, claiming that asking for this information is an invasion of their privacy. Mattel is a consumer-oriented company. We love to hear from our customers. But explaining the reasons for the problem and helping the customer get back online to complete her shopping experience takes a disproportionate amount of time for our customer service representatives.

As a result of our experience, Mattel does not recommend expanded age screening at general interest sites, at least without further modification. Applying our current "one-strike" standard could impose a severe hardship on the online e-commerce community. We strongly recommend that the Commission endorse a more flexible approach by at least offering consumers a neutral, second chance to correct a mistake. For example, we agree that tip-off language at any point in the age-screening process (e.g., "Please enter your birth date. Remember you must be at least 13 years old to participate.") should be avoided. However, if the consumer enters an age below 13, allowing the site to offer a neutral error message such as "did you make a mistake in entering your age?" or "are you sure you typed your birth date correctly?". If the consumer enters an under 13 birth date a second time, the site would set a cookie to prevent the visitor from continuing further. This approach would allow adults who made a mistake in entering their birth date to re-enter their correct age and to continue the shopping experience without frustration, but would not improperly tip off younger users to enter age 13. However, the approach we recommend could minimize consumer frustration, advance e-commerce, and maintain appropriate protections for children for e-commerce sites that, while largely directed to adults, include features that appeal to children.

Sliding Scale E-mail Plus

Based on the past success of the sliding scale e-mail plus method and limited availability or acceptability of alternative digital verification methods, Mattel supports making permanent the e-mail plus rule. As we stated in our comments of February 11, 2005, permitting website operators different methods for obtaining verifiable parental consent, depending on the degree of risk to a child, maintains the flexibility needed in the fast-paced Internet environment. In this regard, COPPA imposes important safeguards designed to protect the most significant threats to children's privacy and the risks involved with an operator using a child's limited personal information, maintained with an appropriate degree of security, solely for its internal use, with no disclosure to third parties, are minimal. As stated above, Mattel notes that CARU also supports making permanent the e-mail plus option and states "parents are comfortable with e-

mail plus.”⁴ Accordingly, Mattel has successfully used the sliding scale in connection with online offerings with no questions or opposition from parents, and we urge the Commission to keep this option open to the online community.

Additionally, alternative verifiable consent methods such as mailed or faxed forms, toll-free telephone numbers and even credit card authorization, are more costly than online methods because they require additional staffing and increase the potential for human error. The development of cost-effective, user-friendly digital methods of parental consent has not proceeded as quickly as some would have hoped. Frankly, because parents trust our brands, we are highly doubtful that they would embrace infomediary technology, and we would be dubious about outsourcing a system that works well and that parents trust. Making the e-mail plus option permanent will not affect the development of secure technologies, but it will provide the public and websites with appropriate flexibility in obtaining parental consents.

Another reason to retain e-mail plus or to allow limited data collection from children for internal marketing programs is to conform online and offline practice. Mattel, like many other companies, offers online and offline promotions, including sweepstakes, where small or large prizes are awarded to a winner. Often, to facilitate the consumer experience, we offer online and offline methods of entry. The offline method is simple. The consumer provides the required information (usually simply name, address and phone number), mails or faxes it to us, and we, in accordance with whatever rules apply to the promotion, select winners and fulfill the prize. Online, if the promotion includes children under 13, the e-mail plus process that we follow involves collecting only the child’s first name, e-mail address, and e-mail address of a parent. This is followed by an e-mail notice to the parent and invitation to return to the site to enter contact information, sometimes coupled with age-screening at the site in an effort to make sure we are dealing with an adult. On top of that, for higher-value prizes, our internal policy is to require a parent to sign a release on behalf of a minor child. If we were forced to adopt more robust methods of consent, such as mail or fax-back forms in all instances, it would not only be inconsistent with offline practice, but the costs of handling the data – which have to be manually added to the relevant database – would likely be such that popular promotions involving a large number of smaller value prizes, like coupons, would be economically infeasible. As a result, we would be forced to focus only on sweepstakes offering a small number of more valuable prizes.

Children and parents enjoy our promotions. So long as the data is used solely for internal marketing, we believe that children are at no more risk when we collect home address and contact information to fulfill a prize online than offline.

In short, restrictions against third-party sharing of data and restrictions against collecting more information than is necessary to participate in website activities maximize protections for children. These limits, and the requirement that data be collected and maintained securely, fully protect children’s privacy. There is no reason the e-mail plus option should not be made permanent. Indeed, the process might further be simplified by specifying that necessary personal

⁴ See letter of February 11, 2005 from Elisabeth Lascoutx to FTC page 2
<http://www.ftc.gov/os/comments/COPPA%20Rule%20Ammend/00054.pdf>

information can be collected from children for internal marketing purposes subject to parental notice and opt-out.

Credit Card Verification

The FTC also seeks comments on the use of credit/debit cards as a means of obtaining verifiable parental consent. Mattel provides these comments in support of maintaining this method of verifiable parental consent as an easy and cost effective method in light of the fact that traditionally, the use of a credit card implies at the very least adult supervision.

While Mattel acknowledges recent marketing of debit cards to teens, use of these cards is not widespread among teens and is not common among children under 13. As reported on www.MSN.com, a recent poll suggested only 11 percent of teens owned credit or debit cards and only a few in the poll were as young as 13 or 14.⁵ As a result, use of these cards to circumvent child age screening mechanisms to children under 13 seems unlikely. Most importantly, it is vital for online shopping sites to be able to assume that transactions made using credit or debit cards are made by adults or with ultimate adult supervision because of billing realities. While there will always be a few children who try to break the system, *e.g.*, a child could always "borrow" Mom's credit card without her knowledge to beat the verifiable consent mechanism, in general, the use of a credit card as verifiable consent mechanism is a reliable method that provides cost savings to businesses and convenience for parents. As a result, the limited possibility that tweens or children could use credit or debit cards to potentially circumvent the parental consent mechanism is weak when balanced against the benefit provided to parents and businesses in providing a simple, instantaneous, and in general, a highly reliable verifiable consent mechanism.

Mattel believes that due to the unique nature of the Internet, businesses must be able to assume an adult is involved in using a credit card and the use of this mechanism as a verifiable consent should remain.

Safe Harbors

The Commission is also interested in feedback on the four approved Safe Harbor programs. Mattel supports the Safe Harbor concept. As a large and well known international brand, Mattel has adopted robust internal mechanisms to comply with COPPA. While we do not participate in the Safe Harbor programs, we respect their value to the industry as a whole. Mattel believes that the Safe Harbor programs provide smaller companies with a mechanism to demonstrate their commitment to protecting child privacy to parents and this, in turn, benefits the online industry as a whole. The Safe Harbor programs raise public awareness of the importance of protecting child privacy and demonstrate that for the most part, the Internet is a safe place for children. Additionally, Mattel believes that the Safe Harbor program demonstrates the benefits

⁵ See <http://www.msnbc.msn.com/id/7493536/>

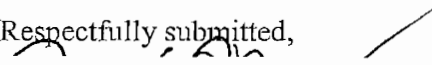
of a self regulatory scheme and mechanism for industry to maintain high standards with limited government intervention. We note in this regard that CARU continues to bring visibility to COPPA compliance obligations by initiating cases with companies who are not Safe Harbor participants.

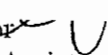
Interface of COPPA and CAN SPAM

We are also providing separate comments today to the FTC regarding the CAN SPAM notice 70 Fed. Reg. 25426-25455 (May 12, 2005). We wanted to comment here, however, on the FTC's interpretation of "send a friend" scenarios and implications for COPPA compliance. Currently, one of our most popular features is the "e-card" in which online visitors have the opportunity to send a message to a friend through our sites and with content the sender believes is of interest to recipient. Mattel believes that its e-cards and other refer-a-friend features fall under the routine conveyance exception of CAN SPAM and the use of the sender and the friend's email address currently falls under the one time use exception of COPPA.⁶ The sender's and recipient's e-mail address is collected solely for purposes of sending the message. That information is dumped from our systems immediately after the message is sent, in accordance with the COPPA one-time only exception. The NPRM in that proceeding has introduced ambiguity into application of CAN SPAM to refer-a-friend features like e-cards, and Mattel seeks confirmation from the FTC that e-cards are not subject to CAN SPAM. Broadly defining refer-a-friend messages as subject to CAN SPAM will result in imposition of requirements, including operating and maintaining an opt-out list, that cannot be done consistent with COPPA without obtaining parental consent. Doing so would force us into a costly and unworkable process, and thus would potentially force us to abandon these popular offerings.

Clarification and consistency with COPPA is essential, and we trust that the FTC will clarify that "e-card" and other "send a friend" scenarios indeed are considered to fall under the "routine conveyance" exception.

Mattel, Inc., appreciates the opportunity to submit comments in this important proceeding. If we can provide further information or explanation, please let me know.

Respectfully submitted, 

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⁶ See *Frequently Asked Questions About the Children's Online Privacy Rule*, Question 44, at <http://www.ftc.gov/privacy/coppafaqs.htm>.